INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	1
Statutes involved	2
Statement	3
Argument	8
Conclusion	14

CITATIONS

Cases:

Brown v. United States, 359 U.S. 41	13
Cudahy Packing Co. v. Holland, 315 U.S. 357	9
Fleming v. Mohawk Co., 331 U.S. 111	9
Goldfinger v. Truck Drivers Local Union No. 299, 283 F. 2d 807, certiorari denied, 368 U.S. 908	13
International Brotherhood of Teamsters v. Middleburg, decided May 11, 1962 (C.A.D.C.), certiorari denied, No. 1025, 30 T. 1961, June 25, 1962	13
United States v. Minker, 350 U.S. 179	12

Statutes:

Fair Labor Standards Act, 52 Stat. 1060, 29 U.S.C. 201, *et. seq.*:	
Sec. 9	9
Sec. 11	9
Federal Trade Commission Act, Sec. 9, 38 Stat. 722, 15 U.S.C. 49	4, 9

Statutes—Continued

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, *ff.*, 29 U.S.C. (Supp. III) 401 *ff.*:

	Page
Sec. 208	10
Sec. 601, 29 U.S.C. (Supp. III) 521	2, 5, 8, 9
Sec. 607, 29 U.S.C. (Supp. III) 527	3, 5, 11

Miscellaneous:

24 Fed. Reg. 8081	5
25 Fed. Reg. 1708	6

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 184

THOMAS BATTLES, PETITIONER

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 33) is reported at 299 F. 2d 937. The opinion of the district court (R. 69–79) is reported at 196 F. Supp. 749.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 1962. The petition for a writ of certiorari was filed on June 16, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 601 of the Labor-Management Reporting and Disclosure Act of 195[illegible] authorizes the

Secretary of Labor to delegate to subordinate officers within the Department of Labor the power to conduct investigations and to issue subpoenas.

2. Whether Sections 601 and 607 of the Act authorize the Secretary of Labor or his designated representative to use the services of an attorney of the Department of Justice to conduct the investigation under a subpoena issued by the Commissioner of the Bureau of Labor-Management Reports of the Department of Labor.

3. Whether a person who has no duty to report under the Act may be required to appear and testify in an investigation under the Act.

4. Whether petitioner, who refused to be sworn, may claim that the immunity provisions of the Act are inadequate to protect him and whether such provisions are constitutional.

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, *ff.*, 29 U.S.C. (Supp III) 401 *ff.*, provides in pertinent part:

Section 601, 29 U.S.C. (Supp. III) 521:

> (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter * * *, to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto.

(b) For the purpose of any investigation provided for in this chapter, the provisions of Sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

Section 607, 29 U.S.C. (Supp. III) 527:

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this chapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this chapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this chapter as may be found to warrant consideration for criminal prosecution under the provisions of this chapter or other Federal law.

Section 9 of the Federal Trade Commission Act, 38 Stat. 722, 15 U.S.C. 49, provides in pertinent part:

> For the purposes of sections 41–46 and 47–58 of this title the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.
>
> Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentar evidence.
>
> Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and

any failure to obey such an order of the court may be punished by such court as a contempt thereof.

* * * * *

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided,* That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

STATEMENT

When the Labor-Management Reporting and Disclosure Act became effective in September 1959, the Secretary of Labor established the Bureau of Labor-Management Reports to handle the Department's responsibilities under Section 601 of the Act, *supra,* pp. 2–3. The Commissioner of the new Bureau was expressly empowered to institute investigations and to issue orders to compel the attendance and testimony of witnesses (General Order No. 102, 24 Fed. Reg. p. 8081; R. 45–46). On February 16, 1960, acting under authority of Section 607 of the Act, *supra,* p. 3, the

Department of Labor and the Department of Justice entered into a "Memorandum of Understanding" (25 Fed. Reg. 1708) which provided, in pertinent part (R. 47):

> Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, investigation under the Act will be conducted as follows:
>
> (a) The Department of Labor will through its own staff investigate those criminal matters arising under:
>
> 1. Title II (Reporting by labor organizations, officers, and employees of labor organizations and employers).
>
> 2. Title III (Trusteeship).
>
> 3. Section 502 (Bonding) of Title V.
>
> 4. Section 503(a) (Making of loans by labor organizations to officers and employees of the labor organization) of Title V.
>
> 5. That part of section 503(b) of Title V which relates to the payment of a fine of a labor official or employee by a labor union.
>
> (b) The Department of Justice will, under delegation from the Secretary of Labor, investigate those criminal matters arising under:
>
> 1. Section 501(c) (Embezzlement of union funds) of Title V.
>
> 2. That part of section 503(b) of Title V which refers to a payment of a fine of a labor official or employee by an employer.
>
> 3. Section 504 (Prohibition against certain persons from holding office) of Title V.
>
> 4. Section 505 (Containing an amendment to section 302, Labor Management Relations Act of 1947, as amended) of Title V.

5. Section 602 (extortionate picketing) of Title VI.

6. Section 610 (deprivation of rights by force and violence) of Title VI.

Thereafter, on June 1, 1961, the Commissioner of the Bureau of Labor-Management Reports delegated to the Department of Justice authority to conduct an investigation into any violations of the Act "in connection with the investigation of the Teamsters League of Philadelphia and related matters" (R. 48).

On June 8, 1961, a subpoena signed by the Acting Commissioner of the Bureau of Labor-Management Reports was served upon petitioner, a labor relations consultant, ordering him to appear before an attorney of the Department of Justice to testify "In the Matter of an investigation by the Department of Justice involving a determination whether any person has violated or is about to violate any provision" of the Act (R. 7–8). Petitioner appeared on the return date of the subpoena. At the outset, the representative of the Department of Justice stated that he intended to inquire into petitioner's relationship with an officer of the Teamsters League to determine whether any transaction had occurred which had to be reported under the Act. He stated that petitioner was summoned as a witness and that he was not the target of the investigation (R. 9–11). Subsequently, the Justice attorney explained that it was known that the official of a large bottling company had attended a $100-a-plate dinner of the Teamsters League with petitioner and had paid petitioner for attending (R. 21). Through counsel, petitioner questioned the

validity of the subpoena and the right of the Department of Justice to conduct the investigation (R. 11–15). He refused to "take an oath or testify" (R. 31).

The Secretary of Labor, through counsel, then petitioned the United States District Court for the Eastern District of Pennsylvania for an order to compel the petitioner to appear and testify as required by the subpoena (R. 33–44). The district court granted the application and ordered petitioner to appear and testify before the Secretary of Labor "or any officer or representative designated by him" (R. 79). The court of appeals affirmed the order (299 F. 2d 937) on the opinion of the district court (R. 69–79), 196 F. Supp. 749).

ARGUMENT

1. The subpoena in this case was issued by the Acting Commissioner of the Bureau of Labor-Management Reports of the Department of Labor under the Labor Department Seal. The claim (Pet. 18–23) that the subpoena was void because it was not personally issued and signed by the Secretary of Labor is without merit. Petitioner's argument is based on the fact that Section 601(a) of the Act, which gives the Secretary of Labor *power* to conduct investigations, does not refer to delegation. Under petitioner's theory not only would subpoenas have to be signed by the Secretary of Labor personally, but all investigations under the Act would have to be personally conducted by the Secretary of Labor. Congress clearly did not intend, and it did not by this legislation inadvertently require, such an absurd result. Subdivision

(b) of Section 601, which incorporates by reference the provisions of the Federal Trade Commission Act relating to the attendance of witnesses and production of records, applies "to the jurisdiction, *powers*, and duties of the Secretary *or any officer designated by him*" [emphasis supplied]. Thus the power to issue subpoenas conferred by the Federal Trade Commission Act in relation to investigations authorized by subsection (a), is specifically made delegable by subsection (b) to "any officer" designated by the Secretary of Labor. The officer who has been so designated is the Commissioner who signed the subpoena in this case. This case is therefore governed by *Fleming* v. *Mohawk Co.*, 331 U.S. 111, in which delegation was held authorized. That the authorization to delegate in this case was conferred in a somewhat different form than in *Fleming* does not change the important common fact that here, as there, express authority to delegate was given.

This case, like *Fleming*, is readily distinguishable from *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, on which petitioner relies. In the *Cudahy* case, this Court emphasized that Congress had drawn a distinction between the delegation of the power to conduct an investigation and delegation of the power to issue subpoenas. Section 11 of the Fair Labor Standards Act, 29 U.S.C. 211, there involved, provided that the administrator or his designated representative had power to investigate, whereas Section 9, incorporating the provisions of the Federal Trade Commission Act, applied only to the "Administrator, the Secretary of Labor, and the industry committees." Here, on the

contrary, the power to delegate is stated in the provision incorporating the Federal Trade Commission Act. It is thus evident that Congress intended to permit delegation of all the powers necessary to investigate, including the power to order attendance of witnesses at a hearing.[1]

Petitioner says, however, (Pet. 24-25) that, even if authorized, the power to issue a subpoena has not in fact been delegated because General Order 102 (R. 45) delegated to the Commissioner of the Bureau of Labor Management Reports only the power to issue "orders to compel the attendance and testimony of witnesses or the production of documents." This argument is frivolous. A subpoena is an order compelling the testimony of a witness or the production of documents.

2. While the subpoena in this case was issued by the Commissioner of the Department of Labor (who thus remained basically in charge of the investigation), the hearing was scheduled before an employee of the Department of Justice, the Commissioner having specifically referred to that Department the Philadelphia Teamsters League investigation. It is true that, under their "Memorandum of Understanding" (*supra*, pp. 6-7), the investigation, involving possible violations of the reporting provisions of the Act, would normally have been conducted by Labor, rather

[1] The Court in *Fleming* stated that delegation could also be supported because of broad rule-making provision of the Emergency Price Control Act there involved. In this case, there is broad authorization for rule-making to implement the Act and "to prevent the circumvention or evasion of such reporting requirements" (Sec. 208, 29 U.S.C. (Supp. III) 438).

than Justice." But that agreement expressly contemplates exceptions. It is "subject to specific arrangements * * * on a case by case basis." Clearly, this was such a special reference.

The claim (Pet. 8-18) that the Secretary of Labor cannot make arrangements for thus obtaining assistance of personnel from the Department of Justice is contrary to the express language of Section 607 (*supra*, p. 3), which authorizes the Secretary to obtain assistance from other governmental agencies in the performance of his functions "[i]n order to avoid unnecessary expense and duplication of functions among Government agencies." The Act in no way limits the matters subject to referral or the agencies to which referral may be made. Here the Department of Labor was merely exercising its statutory right to delegate the conduct of a specific investigation to another government agency, in this case the Department of Justice.

There is nothing contrary to the American tradition in having the Department of Justice investigate violations of law. The Federal Bureau of Investigation of the Department of Justice has been investigating criminal violations for years. That the investigation here took the form of a hearing before an attorney, rather than an interrogation by an F.B.I. agent, does not alter the fact that there is nothing unusual in having the Department of Justice both investigate and prosecute. Petitioner's attempt to liken the procedure here to an inquisitorial board is baseless. Petitioner was merely subpoenaed to appear to answer questions relative to the functioning of the Act.

He was accompanied by his attorney, who fully participated (see Transcript, R. 9–31). Unlike *United States* v. *Minker*, 350 U.S. 179, cited by petitioner, this witness was not a target of the investigation and was so advised (R. 11).

All the delegation in this case amounts to is that instead of Labor personnel taking the time to familiarize themselves with the background information necessary to conduct this fact finding inquiry, the Labor Department is making use of the personnel of the Department of Justice and thus avoiding duplication of effort and expense. The situation here is the same as if the Labor Department had temporarily hired or borrowed certain trained and informed personnel and facilities of the Department of Justice to act in a particular matter. As petitioner himself argues (Pet. 15–18), the Secretary of Labor has not delegated his investigative authority to the Department of Justice. The Department of Labor is still responsible for and in control of the investigation under the Act. The subpoena power remains in the Department of Labor. There has been no attempt to give any person in the Department of Justice the power to issue a subpoena. There is no question of arming prosecuting officials with broad or unchecked subpoena power.

3. Petitioner's claim that he could not be questioned because he had no duty to report under the Act is unsound. There is obviously good reason to obtain testimony from persons not liable under the Act. Truthful testimony is more likely to come from the bystander than from a person who has a duty to

report and might incriminate himself by testifying. The purpose of the hearing is to get information. Persons not under a duty to report who have information are therefore properly summoned as witnesses.

Petitioner's further assertion (Pet. 26) that there must be "probable cause" before a hearing is authorized is conclusively rebutted by the legislative history of the Act. Congress specifically eliminated this requirement. See *Goldberg* v. *Truck Drivers Local Union No. 299*, 293 F. 2d 807 (C.A. 6), certiorari denied, 368 U.S. 938; *International Brotherhood of Teamsters* v. *Goldberg*, decided May 11, 1962 (C.A.D.C.), certiorari denied, No. 1025, O.T. 1961, June 25, 1962.

4. Finally, petitioner claims that the immunity granted to witnesses who testify under subpoena is not sufficient to protect him and that therefore he could not be required to answer questions. Since petitioner has refused to be sworn and has not as yet been asked any questions, the issue is not presented by this case. In any event, the contention that the immunity is incomplete was rejected with respect to a similarly worded statute in *Brown* v. *United States*, 359 U.S. 41, 46, this Court saying, "It is thus clearly too late in the day to question the constitutional sufficiency of the immunity provided * * *".

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari be denied.

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